

WASHINGTON COURT OF APPEALS, DIVISION THREE

State of Washington v. Gary Brandon Ault

No. 40421-8-III (Wash. Ct. App. Mar. 3, 2026) · No. 40421-8-III · Decided March 3, 2026

SUMMARY

The Washington Court of Appeals, Division Three, affirmed Gary Brandon Ault’s convictions and sentence for aggravated first degree murder and related felonies. The court held that an aggravator instruction’s omission of language stating that the burglary must have begun before the killing was a clarification issue rather than omission of an essential element, and that the unpreserved claim was waived. The court also rejected Ault’s ineffective assistance claim because he failed to show prejudice.

CASE DETAILS

COURT	Washington Court of Appeals, Division Three
WRITING FOR THE COURT	Lawrence-Berrey, C.J.; Staab, J.; Murphy, J.
JURISDICTION	Washington Court of Appeals, Division Three
DECIDED	March 3, 2026
DOCKET	40421-8-III
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ault appealed his convictions for aggravated first degree murder and two other felonies, challenging the aggravated-murder jury instruction and asserting ineffective assistance of counsel.
STANDARD OF REVIEW	Unpreserved instructional-error claims are generally not reviewable unless the alleged error is constitutional in magnitude. Ineffective assistance of counsel requires proof of deficient performance and a reasonable probability of a different result absent counsel's errors.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Gary Brandon Ault v. State of Washington

TOPICS

- jury instructions
- criminal procedure
- sixth amendment
- ineffective assistance
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- constitutional law
- appellate procedure
- ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the aggravated first degree murder instruction omitted an essential aggravator element by failing to state that the burglary had to begin before the killing.
2. Whether the failure to object to the aggravator instruction constituted ineffective assistance of counsel.

HOLDINGS

1. The omitted sentence stating that the burglary must have begun before the killing was not an additional element of the aggravating circumstance. It merely clarified the meaning of the instruction's language requiring that the murder occur in the course of, in furtherance of, or in immediate flight from burglary. Because the omission was not constitutional instructional error, Ault's failure to object waived appellate review.
2. Ault failed to establish ineffective assistance of counsel because he did not show a reasonable probability that an objection and a clearer instruction requiring the burglary to begin first would have changed the outcome.

KEY QUOTATIONS

“Due process requires the State to prove every fact necessary to constitute the charged crime beyond a reasonable doubt.” (4)

“The chronology element is logically included in the “in the course of, in furtherance of, or in immediate flight from” language.” (8)

“An ineffective assistance of counsel claim requires Ault to show (1) his trial counsel’s representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, except for the counsel’s unprofessional errors, the result of the proceeding would have been different.” (9)

FACTUAL BACKGROUND

Gary Ault entered the home of Richard Purdy, an elderly man whom Ault did not know, and Purdy was later found dead in his office with 27 stab wounds. A window was broken, blood evidence was found inside and outside the home, and a bloodstained knife bearing Purdy's blood and both men's DNA was recovered near the backdoor. The State's evidence supported the inference that Ault entered through the window during a burglary, confronted Purdy, and killed him with Purdy's knife.

PROCEDURAL HISTORY

The State charged Ault with aggravated first degree murder and two other felony charges. After a jury convicted him on all counts and found the aggravating circumstance, the trial court imposed a mandatory life sentence without the possibility of parole. Ault timely appealed.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)
- State v. Porter, 186 Wn.2d 85, 93, 375 P.3d 664 (2016)
- State v. Bennett, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007)
- State v. Allen, 192 Wn.2d 526, 539, 431 P.3d 117 (2018)
- State v. Tili, 139 Wn.2d 107, 126, 985 P.2d 365 (1999)
- State v. Cardenas-Flores, 189 Wn.2d 243, 267, 401 P.3d 19 (2017)
- In re Det. of Pouncy, 168 Wn.2d 382, 390, 229 P.3d 678 (2010)
- State v. Hacheney, 160 Wn.2d 503, 518, 158 P.3d 1152 (2007)
- State v. Brown, 132 Wn.2d 529, 611-13, 940 P.2d 546 (1997)
- State v. Crawford, 159 Wn.2d 86, 97, 147 P.3d 1288 (2006)
- State v. Holzknecht, 157 Wn. App. 754, 765, 238 P.3d 1233 (2010)

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